

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DOUGLAS J. HORN and CINDY HARP-HORN,

Plaintiffs,

- vs -

MEDICAL MARIJUANA, INC., DIXIE ELIXIRS  
AND EDIBLES, RED DICE HOLDINGS, LLC,  
and DIXIE BOTANICALS,

Defendants.

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**ECF CASE**

**DECLARATION**

Case No. 15-cv-701-FPG/MJR

Daniel S. Gvertz, Esq. declares the following, pursuant to 28 USC §1746,  
under penalty of perjury:

1. I am an attorney at law, duly admitted to practice in the United States District Court for the Western District of New York and am the principal member of Mura & Storm, PLLC, attorneys for the defendants, Medical Marijuana, Inc., (“MMI”), and Red Dice Holdings, LLC (“RDH”) (or collectively “MMI/RDH”) in the above-captioned matter. As such, I am fully familiar with the facts and circumstances set forth in this declaration.

2. I make and submit this declaration in support of MMI/RDH’s motion pursuant to Fed. R. Civ. P. 56(c)(2) to strike, in whole or in part, several pieces of purported evidence submitted in support of plaintiffs’ motion for summary judgment.

3. Fed R. Civ. P. 56(c)(2) permits a party to object if materials submitted in support of a motion for summary judgment cannot be presented in admissible form.

4. As explained in the accompanying memorandum of law, the following documents, in whole or in part, cannot be presented in admissible form and therefore must be stricken from plaintiffs' motion for summary judgment and cannot be considered:

a) The Affidavit of Dr. Kenneth Graham, Ph.D, annexed hereto as **Exhibit A**.

b) The "press release" document, annexed hereto as **Exhibit B**.

c) The "Facebook post" document, annexed hereto as **Exhibit C**.

d) The purported "YouTube videos" cited in the plaintiffs' statement of undisputed facts, and referred to numerous times in their motion for summary judgment.

5. These pieces of purported evidence are each inadmissible hearsay, Exhibits B and C as well as the "YouTube videos" are unauthenticated and unable to be authenticated.

6. Further, the "YouTube videos" and "press release" were never included in any responses to the defendants' numerous requests for disclosure, and the plaintiffs' failure to turn them over renders them inadmissible in support of a motion for summary judgment.

7. In further support of this motion, excerpts of Dr. Graham's deposition testimony are annexed hereto as **Exhibit D**.

8. For the foregoing reasons, and for those stated in the accompanying memorandum of law, defendants MMI/RDH are entitled to an order striking the referenced documents and videos from consideration in support of the plaintiffs' motion for summary judgment.

DATED: Buffalo, New York  
November 16, 2018

/s/Daniel S. Gvertz  
Daniel S. Gvertz, Esq.

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